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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,300	01/26/2007	Lucio Valent	40434	8183
116	7590	05/08/2009	EXAMINER	
PEARNE & GORDON LLP			CORMIER, DAVID G	
1801 EAST 9TH STREET				
SUITE 1200			ART UNIT	PAPER NUMBER
CLEVELAND, OH 44114-3108			1792	
			MAIL DATE	DELIVERY MODE
			05/08/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/579,300	VALENT ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	DAVID CORMIER	1792	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-3 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 16 May 2006 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____ .                                     |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>05162006</u> .  | 6) <input type="checkbox"/> Other: ____ .                         |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by

Wasemann (USPN 4,502,303).

3. Wasemann discloses a counterweight, "balance ring," connectable to a washing machine tub (40), comprising an hollow shell, "body," (42) of U-shaped cross-section for containing a concrete ballast mass poured therein (Figure 2; col. 5, lines 1-10), characterized in that said shell is integrally provided in one piece (Figures 2 and 5) with a least a foldable member, "cap," (43; col. 5, lines 1-4) adapted to close at least a portion of said shell in order to encapsulate said concrete ballast mass (Figure 2). The phrase "foldable member" is being interpreted broadly to encompass a polypropylene "cap" because polypropylene would not be perfectly rigid and could be folded. Also, though Wasemann meets the limitation of having a concrete ballast mass, the phrase "for containing a concrete ballast mass" is not being given patentable weight because it is considered to be intended use of the apparatus.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wasemann (USPN 4,502,303).

7. Regarding Claims 2 and 3, Wasemann is relied upon as applied to Claim 1. Specifically regarding Claim 2, Wasemann discloses that the foldable member (43) is a cover extending from a peripheral edge (top left portion of the u-shaped shell as shown in Figure 6) of said shell, "body," (42) in correspondence to enlarged lower portions thereof (this phrase is interpreted as being the cavity of the body as in Figure 6), and the foldable member, "cap," (43) is joined to the u-

shaped section, "body," (42) by vibration welding. And specifically regarding Claim 3, Wasemann discloses the foldable member (43) has a peripheral edge comprising a clamping rim, "inner flange," (65) adapted to engage a corresponding edge of said shell (top right portion of the u-shaped shell as shown in Figure 6) to close the enlarged lower portion and encapsulate the ballast mass (See Figure 6).

8. Wasemann does not disclose that the peripheral edge integrally provides pivotal sections adapted to facilitate the rotation of said foldable member around the peripheral edge so that the ballast mass contained in the enlarged lower portion are covered by said foldable member.

9. Because it is commonly known to have a protective cover which is attached using a pivotal section (for example: a sun visor for a car typically includes a vanity mirror with a hinged protective cover that snaps in place; or a computer laptop typically has a hinged screen which uses the body/keyboard of the laptop for a protective cover and typically includes a locking mechanism) and the results would have been predictable, namely, an effective way of attaching a protective cover to a balance ring, it would have been obvious to substitute the vibration weld for a hinge/pivotal section which could be placed on an outer periphery of the "cap" with the opposite side, or an inner edge, of the cap having a clamping rim to engage and lock the cap in place. The resulting counterweight having a cover with a pivotal section adapted to facilitate the rotation of the cover would yield the claimed invention.

***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID CORMIER whose telephone number is (571) 270-7386. The examiner can normally be reached on Monday - Thursday 8:30 - 6:00.

11. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr can be reached on (571) 272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Barr/  
Supervisory Patent Examiner, Art  
Unit 1792

/DGC/  
David Cormier

Application/Control Number: 10/579,300

05/06/2009